IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.1890 OF 1981
WITH
CIVIL REVISION APPLICATION NO.377 OF 1982

THE HON'BLE MR. JUSTICE Y.B. BHATT:

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. R.N. Shah, advocate for the petitioner in CRA 1890/81.
Mr. S.S. Balsara, adavocate for the petitioner in CRA 377/82

CORAM: Y.B. BHATT J.
Date of Decision: 01-12-1995

JUDGEMENT

1. These revisions are filed under section 29(2) of the Bombay Rent Act ('the said Act' for short). The petitioner in CRA No.1890/81 is the original defendant-tenant and respondent is the original plaintiff-landlord. Conversely, the

petitioner in CRA No.377/82 is the original plaintiff-landlord, and the respondent is the original defendant-tenant.

2. The landlord had filed a suit for a decree of eviction against the tenant in respect of the suit premises, on the ground of reasonable and bonafide requirements under section 13(1)(g) of the said Act.

3. The case of the landlord, as pleaded in the plaint and as sought to be made out by evidence on record, was to the effect that he has become the owner of the suit premises occupied by the defendant, which premises form a part of the larger house. The said house has two floors (above the ground floor). According to the plaintiff-landlord, the defendant is a tenant of and in possession of three rooms on the northern side of the larger house. There was a partition between the plaintiff, his brother and father in respect of the house in question, whereby the southern portion went to the share of his brother, and the northern portion came to the share of the plaintiff-landlord. The defendant was a tenant of 3 rooms on the ground floor, where he was running a tailoring business. Thus, the premises where the defendant is a tenant, came to the share of the present plaintiff. There was formerly a staircase to go up to the first floor and this staircase was located on the ground floor within the premises tenanted by the defendant. Apart from three rooms, the defendant was also in possession of a courtyard forming part of the leased premises. The plaintiff-landlord was staying on the second floor, while the plaintiff's brother was residing on the entire first floor of the entire house (prior to the partition). Due to the partition, the plaintiff became the owner of the northern side of the house and the plaintiff's brother became the owner of the southern side of the house. However, in order to effect the partition by metes and bounds, certain structural alterations and re-adjustments are essential. The staircase which leads to the first floor and then to the second floor is located in the southern part of the house which has been allocated to the share of the plaintiff's brother. Thus, the plaintiff, in order to go to the first floor and the second floor of the northern side of the house now coming to his share, would have to construct a new staircase and this would necessarily have to be done in the portion tenanted by the defendant. Similarly, there was only one latrine located in the southern portion of the larger house which has now gone to the share of the plaintiff's brother. Thus, the plaintiff is required to construct a new latrine and this must necessarily be located either in the courtyard or somewhere on the northern portion of the house coming to his share. Furthermore, when the house is actually divided into two, along a line running east-west, the

plaintiff would have to give up the bigger southern portion of the second floor presently in his possession, and the plaintiff's brother would be required to vacate the northern side of the first floor presently in the latter's possession. Thus, in order to effect the partition by metes and bounds, the plaintiff requires the defendant to vacate the suit premises. According to the plaintiff, the partition by metes and bounds cannot be postponed any further since he and his family members are experiencing shortage of space and it causes great inconvenience to the members of both the families.

4. Apart from the need arising from the partition of the property, the landlord has further pleaded shortage of accommodation for members of his family. He has also pleaded reasonable and bonafide requirement on account of the fact that he desires to start a provision store to be run jointly by him and one of his sons.

5. The defendant filed his written statement at Exh.9 and contested the suit on all the grounds. He further pleaded that even if it is established that the plaintiff reasonably and bonafide required the suit premises, no decree for eviction could be passed since such a decree would cause greater hardship to him (the tenant), than the hardship which would be suffered by the landlord in case the decree is refused. This defence was taken by the tenant in view of section 13(2) of the said Act.

6. The trial court framed issues at Exh.10 and on an appreciation of the evidence on record, held that the landlord reasonably and bonafide required the suit premises for his own use and occupation, and further held that the landlord would suffer greater hardship if the decree was refused than the tenant would suffer if the decree is passed. Thus, the trial court decreed the suit of the plaintiff.

7. The tenant, being aggrieved by the aforesaid decree of eviction, preferred an appeal under section 29(1) of the said Act being Civil Appeal No.255/78.

8. The appellate court, after considering the entire material on record, upheld the finding of the trial court to the effect that the landlord had proved his reasonable and bonafide requirement, but did not entirely agree with the trial court on the question of hardship. The lower appellate court, on an appreciation of the facts and material on record, held that interests of justice would be served, and the relative hardship of the landlord and tenant could be conveniently balanced, if a decree for eviction is passed only in respect of part of the tenanted premises. The appellate

court, therefore, partly allowed the appeal of the tenant and directed only eviction of the suit premises to the extent of the courtyard, the third room and half portion of the middle room which were in possession of the tenant.

9. In respect of this partial decree of eviction, both the landlord as also the tenant are aggrieved, and hence each of them have preferred two revisions, which are now being dealt with together.

10. Before proceeding with the contentions raised in the present revision, it must be kept in mind that the present revision is one under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In the context of the powers of the High Court exercisable in such revisions, the ratio laid down by the Supreme court in the case of Helper Girdharbhai (AIR 1987 SC 1782) is most relevant. In the said decision the Supreme Court has observed in substance that in exercising revisional power under section 29(2) the High Court must ensure that the principles of law have been correctly borne in mind by the lower court. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. In order to warrant interference, the decision must be such a decision which no reasonable man could have arrived at. Lastly, such a decision does not lead to a miscarriage of justice. But, in the guise of revision, substitution of one view where two views are possible and the Court of Small Causes has taken a particular view, is not permissible. If a possible view has been taken, the High Court would be exceeding its jurisdiction if it substitutes its own view in place of that of the courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant.

10.1 It must also be noted that in the case before the Supreme Court, the findings of the trial court were reversed in appeal, and it was the appellate decision which was before the High Court. The High Court in the revision under section 29(2) reversed the finding. Thus, in the revision before the High Court, it was not a case of concurrent findings of fact.

11. The first question which requires to be considered in the present revision is as to whether the landlord has succeeded in establishing his reasonable and bonafide personal requirement.

12. The landlord has sought to make out a personal and bonafide requirement under three different sub-heads viz. (i) shortage of accommodation for his own use and of the family, (ii) the need to start a grocery business in the premises to

be run by himself and his son, and (iii) the need arising from giving effect to the partition, by dividing the property by metes and bounds.

13. I will first take up the discussion of giving effect to the partition which is at Exh.38. The fact that there was a partition at all was sought to be contested by the tenant, which however has rightly been held in favour the landlord in view of the overwhelming evidence on record. To my mind, this is not a question which can legitimately urged by the tenant in the present revision.

14. As per the partition deed, the southern portion of the larger house went to the share of the plaintiff's brother and the northern portion came to the share of the plaintiff. The existing latrine is located on the southern portion of the house which has gone to the share of the plaintiff's brother and so also the staircase which leads to the first floor and the second floor. Thus, the plaintiff would have to build another latrine and another staircase so as to have access to the first floor and second floor of the northern part of the house which has come to his share. At the time of evidence, the plaintiff was occupying only one room and one kitchen located on the second floor, whereas the entire first floor was occupied by the plaintiff's brother. This is evidenced by the sketch and the panchnama of the house at Exh.39 and 40 supported by the deposition of the plaintiff. The lower appellate court has rightly taken note of certain admissions of the defendant-tenant made in his deposition to the effect that there was in fact a partition of the larger house, that it was divided into northern portion and southern portion, that the Otta on which the lavatory is situated has gone to the share of the plaintiff's brother and so also the staircase. Ultimately the defendant's challenge to the fact of partition appears to have been given up in view of the fact that the defendant-tenant himself has signed as an attesting witness to the partition deed Exh.38.

15. The lower appellate court has also examined with the correct perspective the evidence of the plaintiff's brother Keshavlal Jamnadas at Exh.69. On a totality of the evidence on record the lower appellate court was justified in coming to the conclusion that the partition was a genuine partition, and the need to give effect to the same by effecting a partition by metes and bounds is also genuine.

16. The lower appellate court has also considered the consequential aspect of how a new latrine and staircase can be put up by the plaintiff, and the different situations which would arise under different locations.

17. From the evidence on record, it cannot be disputed that there is some open land (referred to as "Wada") located behind the house (as a whole). The plaintiff has under the partition, acquired one half portion of this Wada which again is in occupation of the defendant-tenant. Furthermore, the plaintiff would have access to this Wada only by passing through the middle room which is under the occupation of the defendant. Moreover, this room under occupation of the defendant is the only place where a new staircase can be put up for obtaining access to the first floor and the second floor of the northern portion coming to the share of the plaintiff. Thus, on a totality of the evidence on record, the lower appellate court has come to the conclusion that the landlord is entitled to a decree of eviction against the defendant, at least on the ground of giving effect to the partition.

18. As regards the other two sub-heads, pleaded by the landlord by way of reasonable and bonafide requirement viz. (i) the need for starting a grocery business with his son, and (ii) shortage of accommodation in respect of his own family, have been negatived by the lower appellate court. Again, these are findings of fact based upon a reasonable and logical appreciation of the evidence on record and, therefore, I do not propose to disturb those findings in the present revision.

19. Thus, the need of the landlord is found to be reasonable and bonafide with a view to give effect to the partition between the members of the HUF. The next question which would arise would be the balance of the hardship between the plaintiff-landlord and the defendant-tenant, which is required to be considered in view of section 13(2) of the said Act. It may be noted here that the second part of subsection (2) of section 13 specifically contemplates that the court may pass a decree in respect of a part of the premises only, if it is satisfied that no greater hardship on account of the partial decree would be caused to either side and that neither would suffer such hardship which they would have to in case the entire decree as prayed for is either passed or refused, as the case may be.

20. On the question of relative hardship, the lower appellate court has dealt with this aspect in considerable detail. It has examined this situation as regards the location of the Wada and the rooms in occupation of the defendant. It has also considered that the only place where a new staircase could be put up by the plaintiff is in the middle room occupied by the tenant, since the tenant is using the other room for doing his business of tailoring. The second room is used for the purpose of "trial" (for the purpose of fitting room for customers). A third room on the

western side is mostly unused by the defendant, in which context he states that it is used for purposes of "taking tea and meals, etc.". Thus, on this evidence the lower appellate court has rightly come to the conclusion that the defendant does not require all the three rooms for the purpose of running a tailoring business. In this context it is also to be noted that admittedly the defendant had taken the present premises on rent 37 years ago, and at that point of time he was also using the rear portion of the rented premises for his residence. However, some time thereafter he purchased his own house, and the rented premises then were used only for his tailoring business. On other aspects of the difficulty or hardship that may be faced by the tenant, the lower appellate court has also considered the economic aspect of the matter. It is found that the eldest son is serving at Ahmedabad and getting Rs.600/-, another son serving at Rajpipla is earning Rs.600/and yet another son is serving in Alembic at Baroda and earning Rs.450/- and the fourth son is working with him in the tailoring business. Furthermore, the defendant has rented out part of his residential house and is also deriving some income from those tenants. The defendant has further admitted in the crossexamination that he has made no attempt to find out whether he can shift his present tailoring business into some other premises.

21. It is by now well settled law that if the defendant has not made any attempt to locate alternative accommodation, it cannot be said that the difficulty or hardship that he would face on account of a possible decree for eviction is insurmountable, or that it would be a case of extreme hardship. The lower appellate court has, therefore, rightly found that in case a partial decree for eviction is passed against the tenant, he would not suffer greater hardship than what the plaintiff-landlord would suffer if no decree is passed.

22. Thus the lower appellate court has, in my opinion, taken a very reasonable and rational view of the collective evidence on record, and has rightly examined all the relevant aspects of the matter. It has also considered to what extent the hardships of the landlord and the tenant can be balanced with each other, and also how the hardship to the tenant can be minimised, by passing a decree only to the minimum extent which would meet the landlord's needs.

23. Thus, on a comprehensive appreciation of the evidence on record, I am satisfied that the judgement and decree of the lower appellate court is based on a rational and reasonable interpretation of the evidence on record, and that the discretion it has exercised in passing only a partial decree in respect of the tenanted premises is a judicial discretion

exercised well within the permissible norms and extent, and the same does not, therefore, warrant any interference in the present revision.

24. Accordingly, the judgement and decree passed by the lower appellate court is upheld in its entirety, and consequently both the revisions, which seek to challenge the said judgement and decree from its different aspects are required to be rejected.

25. Consequently, both the revision applications are dismissed. Rule is discharged in each of the revisions with no order as to costs. Interim relief is vacated in CRA No.1890/81.

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